

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

<b>In the Matter of:</b>	)	
	)	
<b>Implementation of the Satellite Home Viewer Improvement Act of 1999</b>	)	<b>CS Docket No. 00-96</b>
	)	
<b>Broadcast Signal Carriage Issues</b>	)	
	)	
<b>Emergency Petition of National Association of Broadcasters And Association of Local Television Stations</b>	)	
	)	

**To:   The Commission**

**REPLY COMMENTS OF NATIONAL ASSOCIATION OF BROADCASTERS**

The inevitably profound adverse impact of EchoStar's two-dish scheme is reflected in the outpouring of comments from broadcasters of all stripes and from all parts of the country -- even on the fast-track schedule that the Commission has properly established. These filings tell a painful, powerful, and irrefutable story: SHVIA's core principle of carry-one-carry-all will be gutted if EchoStar is allowed to continue to segregate disfavored stations on remote satellites that will be accessible, at best, to only a tiny fraction of its subscribers.

In its Opposition, EchoStar reargues its position that the Commission is powerless under SHVIA to bar discrimination via forced use of second dishes to receive only some local stations. Opp. at 3-9. EchoStar once again asserts, for example, that the Commission is barred from dealing with abuses relating to acquisition of new equipment because of certain language in an

early draft of the SHVIA. Opp. at 6. Having already twice carefully considered -- and twice carefully rejected -- these hackneyed arguments, there is no reason for the Commission to ponder them yet again.

In their petition, NAB and ALTV demonstrated in detail that the Commission did *not* intend for satellite carriers to be able to isolate some (but not all) stations in a manner that requires subscribers to acquire additional equipment to receive the stations. They also demonstrated that the reference to "purchase" of equipment at the subscribers' "own expense" was intended only to permit satellite carriers to carry *all* local stations in a manner that requires customers to purchase additional equipment, and that the Commission did *not* intend the converse -- to permit carriers to isolate certain stations so long as they offer to pay for the out-of-pocket costs of acquiring additional equipment. NAB/ALTV Emergency Petition at 3-6.

Nothing that EchoStar says in its Opposition rebuts any of this. And nothing in EchoStar's Opposition requires the Commission to commence a new rulemaking proceeding simply to reaffirm what it plainly intended in the first place.

In these Reply Comments, NAB therefore focuses on several important new factual matters that demonstrate the need for the Commission to quickly put an end to EchoStar's two-dish gambit.

**1. EchoStar's Own Previous Filings With the Commission Expressly Acknowledge that Two-Dish Delivery of Local Stations Is Not Acceptable to Consumers, Even When *All* Local Stations Are Offered on the Second Dish**

EchoStar states in its petition that "it logically follows that subscribers will acquire a second dish *for free* to receive the local stations they desire," Opp. at 12, and that broadcasters' claims about the hassles and inconvenience of obtaining and maintaining a second dish are erroneous. *Id.*

In fact, EchoStar has extensive experience with consumer reactions to obtaining local stations from a second satellite dish -- and *it knows that consumers view a second dish as posing unacceptable costs*, without regard to the out-of-pocket expense of purchasing and installing the second dish. Indeed, EchoStar has previously told the Commission exactly that.

The pertinent background is as follows: from early 1998 until some time in 1999, and before the enactment of the SHVIA, EchoStar offered local-to-local transmissions of certain local stations (typically the major network stations) to subscribers in several markets.<sup>1/</sup> At that time, *all* of the local stations that EchoStar offered were offered as a package, but -- because the package was offered from a "wing slot" satellite -- it required use of a second dish. In at least some cities, EchoStar offered second dishes for free -- just as it purports to be doing now -- except that it actually announced its free offer, rather than trying to keep it a secret.<sup>2/</sup>

As the Commission is aware, EchoStar ultimately abandoned the two-dish method of offering local stations. Before it did so, however, EchoStar candidly admitted to the

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<sup>1/</sup> EchoStar Press Release, *DISH Network is the Only One! EchoStar's DBS Service the First and Only to Guarantee Local Channels* (Jan. 8, 1998).

<sup>2/</sup> EchoStar Press Release, *EchoStar DISH Network Launches DISH NETS Local Channels in Pittsburgh -- EchoStar Offers Customers **Free Second Dish** For Local Channel Access* (Sept. 15, 1998) (emphasis added), [www.web.archive.org/web/19991008075007/www.dishnetwork.com/profile/press/press/press139.htm](http://www.web.archive.org/web/19991008075007/www.dishnetwork.com/profile/press/press/press139.htm) <visited Feb. 4, 2002>.

Commission that, even under ideal conditions -- with a free dish, and with the *entire* local station package (as opposed to just a few stations) being offered on a second dish -- the two-dish option encountered "substantial consumer resistance," was "unfortunate[]," and "not an attractive alternative":

EchoStar has had to offer a two-dish solution to complement its full-CONUS offering with services from its satellites at 61.5° W.L. and 148° W.L. . . .

***EchoStar has encountered substantial consumer resistance to the perceived difficulties of installing and maintaining second dishes.*** . . . [citation omitted]

("As a 'second-best' solution to this problem of orbital scarcity, EchoStar has been offering limited local-into-local service through the use of half-CONUS satellite capacity. *This requires the use of multiple dishes, and will thereby be more difficult to market as a convenient alternative to cable.*"); [citation omitted]

("EchoStar currently offers local programming through its satellites at 61.5° W.L. and 148° W.L. *This arrangement **unfortunately**, requires customers to install a second dish in order to receive local programming.* While some customers have embraced the two-dish system, *others have found it to be cumbersome and difficult, despite EchoStar's offer to install the second dish free of charge. To date, the two dish solution **has not proven to be a particularly attractive alternative to cable.***") (citations omitted.)

[EchoStar] Petition to Deny, *In Re Tempo Satellite, Inc.*, File No. SAT-ASB-19990127-00014 at 3 n.4 (filed March 5, 1999) (copy attached as Appendix A) (emphasis added).

In light of EchoStar's conceded inability to persuade any substantial number of consumers to accept a free second dish to receive *all* local stations, its suggestion that it is reasonable to expect consumers to acquire a second dish to obtain only *some* local stations is disingenuous.

**2. Incredibly, EchoStar Has Made Its "Free Offer" Even More Obscure and Confusing While This Proceeding Has Been Pending**

In their prior filings, NAB and ALTV pointed out (1) that EchoStar has made *no* disclosure of its "free offer" on its web site, and (2) that the letter to subscribers "disclosing" the "free offer" did so only in an obscure footnote buried in a letter that highlighted three other topics. EchoStar does not dispute either of these points. As to the latter point, incredibly, far from apologizing, EchoStar actually *boasts* in its Opposition that "the second dish offer was raised only in a footnote." Opp. at 11.

EchoStar's dubious claims that it has trained its Customer Service Representatives to answer calls about the "free dish" offer is belied by numerous commenters, whose experiences have been to the contrary.<sup>3</sup> More significantly, *since very few customers have ever heard of the supposed offer, they have no reason to ask their Customer Service Representative about it.* Nor does a mention of the "offer" on an obscure "Charlie Chat" program, (Opp. at 11), watched by a tiny fraction of EchoStar's subscribers, count as a serious effort to communicate the "offer" to all of EchoStar's customers.

Strikingly, EchoStar's web site now reveals even *less* than it did a few weeks ago about the status of the stations that it has relegated to a second dish. When one clicks on "Washington, D.C.," for example, a page appears that lists *only* the stations that are carried on EchoStar's CONUS satellites. At the bottom of that page appears the phrase "Additional Local Channels

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<sup>3</sup> See, e.g., Comments of Brunson Communications, Inc. at 9 (filed Feb. 4, 2002); Comments of Univision at Exh. 2 (filed Feb. 4, 2002); Comments of KCSI, at 2-4 (filed Feb. 4, 2002); Comments of Manantha Broadcasting at 6-8 (filed Feb. 4, 2002).

Available."<sup>4/</sup> Only by clicking on that link can one learn that there are additional stations that have been placed in EchoStar's second-dish quarantine. *And even then there is no mention whatsoever of the supposed "free offer" to purchase and install dishes.*

The facts are clear: EchoStar wants to be able to *say* that it has made a "free dish" offer but it has failed utterly to communicate the "offer" to its subscribers in any effective manner.

### **3. EchoStar's Duplicity About the Reasons It is Resorting to the Two-Dish Scheme and About its Future Plans**

EchoStar's Opposition begins by asserting that the reason it is resorting to discriminatory treatment of certain local stations -- including virtually all if not all Spanish-language stations -- is that its satellite manufacturers are behind schedule in producing the spot-beam satellites that EchoStar has ordered. Opp. at 1-2. Logically, then, EchoStar should tell the Commission that it will rely on the two-dish gambit only until its first spot-beam satellite (EchoStar VII) is launched, presumably in the next few months.

*But that is not what EchoStar says.* After pointing to satellite delays as its excuse for "temporarily" discriminating against certain local stations, EchoStar then goes silent about when its "delayed" satellite will be launched to give it additional CONUS capacity. Instead, EchoStar points to something entirely different -- its merger with Hughes -- as the event that will supposedly bring its discriminatory treatment of some local stations to an end. And it aggressively insists that it has the right under the Commission's regulations to continue to isolate disfavored stations on remote satellites for as long as it likes. Opp. at 22.

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<sup>4/</sup> See EchoStar Web site, [www.dishnetwork.com/content/programming/locals/package/index.asp?viewby=2&packid=22&sortby=1](http://www.dishnetwork.com/content/programming/locals/package/index.asp?viewby=2&packid=22&sortby=1) <visited Feb. 4, 2002>.

*In short, there is a complete and total disconnect between EchoStar's purported excuse for discriminating against certain local stations and its proposed remedy for its discriminatory conduct.*

The Commission should permit a satellite carrier to rely on a two-dish solution *only* subject to all of the conditions set forth in NAB's previous filings, *only* if the carrier had begun serving the market in question before December 31, 2001, and *only* if the carrier demonstrates that its inability to offer all stations with the same reception equipment is due to circumstances entirely beyond its control. As of now, EchoStar has not come close to satisfying these requirements. Indeed, EchoStar's implicit message is clear: it has decided *not* to rely on its own spot-beam satellites to remedy the abuses that its two-dish scheme is causing, but has decided instead (a) to await the merger with Hughes, should it be approved, to offer a one-dish solution and (b) if the merger is not approved, to rely on the two-dish gambit indefinitely. *See* Opp. at 22 (claiming that "the law is clear" that EchoStar can isolate stations on a distant satellite).

The Commission should not tolerate this contempt for its rules and for the core principles of the SHVIA. It should promptly clarify that its rules do *not* permit a carrier to force consumers to acquire additional equipment to receive certain local stations.

### **Conclusion**

For the foregoing reasons, and the reasons set forth in NAB's and ALTV's January 4, 2002 Petition, the Commission should confirm that its rules do not permit a satellite carrier to segregate certain local stations on a satellite that requires subscribers to acquire additional equipment.

Respectfully submitted,

NATIONAL ASSOCIATION OF  
BROADCASTERS

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of February, 2002, I caused a copy of the foregoing Reply Comments of National Association of Broadcasters to be served by U.S. Mail on the following:

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